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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 Philip C.H. Peng,

7 Plaintiff,

8 v.

9 Internal Revenue Service,

10 Defendant.

Case No. 2:22-cv-00988-GMN-DJA

11 **Order**

12 Under 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested  
13 authority to proceed *in forma pauperis*. (ECF No. 1). Plaintiff also submitted a complaint. (ECF  
14 No. 1-1). Because the Court finds that Plaintiff's application is complete, it grants his application  
15 to proceed *in forma pauperis*. However, because the Court finds that Plaintiff's complaint does  
16 not properly assert sufficient facts, it dismisses his complaint with leave to amend.

17 **I. In Forma Pauperis Application**

18 Plaintiff filed the affidavit required by § 1915(a). (ECF No. 1). Plaintiff has shown an  
19 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed  
20 *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now review  
21 Plaintiff's complaint.

22 **II. Screening the Complaint**

23 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the  
24 complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is  
25 legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks  
26 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).  
27 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend  
28 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the

1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70  
2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a  
4 complaint for failure to state a claim upon which relief can be granted. Review under Rule  
5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d  
6 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of  
7 the claim showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v.*  
8 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual  
9 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the  
10 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v.*  
11 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations  
12 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,  
13 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory  
14 allegations, do not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not  
15 crossed the line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550  
16 U.S. at 570. Allegations of a *pro se* complaint are held to less stringent standards than formal  
17 pleadings drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding  
18 that liberal construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

19 Federal courts are courts of limited jurisdiction and possess only that power authorized by  
20 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.  
21 § 1331, federal courts have original jurisdiction over “all civil actions arising under the  
22 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when  
23 federal law creates the cause of action or where the vindication of a right under state law  
24 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277  
25 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the  
26 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a  
27 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”  
28 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

1           ***A. The Court dismisses Plaintiff's complaint without prejudice.***

2           Plaintiff states that he has not received two stimulus checks—one for \$1,800 and one for  
3           \$600—and that the IRS has not listened to his complaints about the missing checks. (ECF No. 1-  
4           1 at 3, 6). Plaintiff asserts that he tried to sue the IRS in small claims court, but that the court told  
5           him that it did not have jurisdiction over the IRS. (*Id.* at 6). Plaintiff also names several  
6           individuals as defendants but does not explain their involvement in the case. (*Id.* at 2).

7           Plaintiff's complaint lacks sufficient factual detail to state a cognizable claim. While  
8           Plaintiff claims that his case arises under federal law, he does not identify the statute or cause of  
9           action under which he brings his claim. Additionally, while Plaintiff alleges that the IRS has not  
10          listened to his complaints about the missing checks, he does not explain when he contacted the  
11          IRS, with whom he spoke, or any other circumstances around the IRS declining to help him.  
12          Without more, Plaintiff has not asserted a cognizable claim.

13  
14          **IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma*  
15          *pauperis* (ECF No. 1) is **granted**. Plaintiff shall not be required to pre-pay the filing fee.  
16          Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of  
17          any additional fees or costs or the giving of a security therefor. This order granting leave to  
18          proceed *in forma pauperis* shall not extend to the issuance and/or service of subpoenas at  
19          government expense.

20          **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff's  
21          complaint (ECF No. 1-1) on the docket but shall not issue summons.

22          **IT IS FURTHER ORDERED** that the complaint (ECF No. 1-1) is **dismissed without**  
23          **prejudice** for failure to state a claim upon which relief can be granted, with leave to amend.  
24          Plaintiff will have until **September 16, 2022** to file an amended complaint if the noted  
25          deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed  
26          that the Court cannot refer to a prior pleading (i.e., the original complaint) to make the amended  
27          complaint complete. This is because, generally, an amended complaint supersedes the original  
28          complaint. Local Rule 15-1(a) requires that an amended complaint be complete without reference

1 to any prior pleading. Once a plaintiff files an amended complaint, the original complaint no  
2 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
3 complaint, each claim and the involvement of each Defendant must be sufficiently alleged.

4 **Failure to comply with this order will result in the recommended dismissal of this case.**

5  
6 DATED: August 18, 2022

A handwritten signature in blue ink, appearing to read 'D. Albregts', is written over a horizontal line.

DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE